

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 16 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0328-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
DAVID RICARDO TORRES,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20074891

Honorable John S. Leonardo, Judge

REVIEW GRANTED; RELIEF DENIED

David R. Torres

Tucson
In Propria Persona

ESPINOSA, Judge.

¶1 Petitioner David Torres seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., in which he alleged he had received ineffective assistance of counsel. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion."

State v. Swoopes, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Torres has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Torres was convicted of aggravated assault causing serious physical injury. He appealed, and this court affirmed his conviction and sentence. *State v. Torres*, No. 2 CA-CR 2008-0337 (memorandum decision filed Nov. 20, 2009). While his appeal was pending, Torres initiated proceedings pursuant to Rule 32, arguing in his petition that his conviction should be vacated because (1) there was insufficient evidence to support it, (2) he had not received timely notice that the state would allege accomplice liability, and (3) trial counsel had rendered ineffective assistance. The trial court ordered the proceedings stayed until the conclusion of the appeal.

¶3 After this court's mandate issued, Torres filed a supplemental petition for post-conviction relief. In that petition he asserted that "new evidence" of *Brady*¹ violations required the reversal of his conviction, that he had discovered new evidence the victim had "initiated the altercation," and that appellate counsel had been ineffective.² The trial court summarily denied relief, concluding (1) Torres had received sufficient notice of the state's accomplice liability theory and sufficient evidence had supported his conviction on that basis; (2) he had failed to state a colorable claim of ineffective assistance of trial or appellate counsel because, with respect to his specific allegations, he

¹*Brady v. Maryland*, 373 U.S. 83 (1963).

²Before appointed counsel filed the petition and supplemental petition for post-conviction relief ruled upon by the trial court, Torres had filed a pro se petition for post-conviction relief. At Rule 32 counsel's request, the court ordered that pro se petition withdrawn.

either had failed to show that counsel’s performance had been deficient or had failed to show he had been prejudiced by counsel’s conduct; (3) there had been no *Brady* violation; and (4) Torres had not shown he had exercised “reasonable diligence” in discovering the alleged new evidence or shown such evidence likely “would have changed the verdict.”

¶4 On review, Torres maintains “the trial court abuse[d] its discretion by failing to conclude that [he] had raised a colorable claim of ineffective assistance of trial counsel warranting . . . [an] evidentiary hearing” and “by not viewing the factual allegations of petitioners claims as being true.” He then essentially reiterates the arguments he made below.

¶5 First, we note that this court addressed on appeal the issues Torres raised in his petition for post-conviction relief related to the state’s accomplice liability theory and the evidence presented in support of that theory. *Torres*, No. 2 CA-CR 2008-0307, at 3-6. Torres’s claims on those issues therefore are precluded, and the trial court could have denied relief on those claims for this reason alone. *See* Ariz. R. Crim. P. 32.2(a)(2) (claim precluded when “[f]inally adjudicated on the merits on appeal”).

¶6 As to Torres’s remaining claims, we cannot say the court abused its discretion in denying his petition for post-conviction relief. The court clearly identified the claims raised and resolved them correctly in a thorough, well-reasoned minute entry, which we adopt. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly rules on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by

this court[’s] rehashing the trial court’s correct ruling in a written decision”). Thus, we grant the petition for review, but deny relief.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge